IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07/11/2003

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THE HONOURABLE MR.JUSTICE A.K.RAJAN

Writ Petition No.21132 of 2000

T.R.Meenakshi ..... Petitioner

-Vs-

1. State of Tamilnadu
represented by its Secretary
Department of Education
Fort St.George, Madras 9

2. The District Educational Officer
Ponneri

3. The Accountant General
Office of the Accountant General
Madras 18

4. Vellayan Chettiar Higher Secondary School
represented by its Correspondent
Thiruvottiyur
Madras 19 ..... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus as stated therein.

!For petitioner : Mr.V.Prakash

For Respondents : Mr.R.Vijayakumar
Government Advocate
for R1 and R2
Mr.T.Ravikumar for R3
Mr.S.Thankasivan for R4

:ORDER

This writ petition has been filed for the issuance of a writ of certiorarified mandamus, to call for the records of the second respondent in connection with Order Ref.Na.Ka.No.6421/97/A.3 dated 07.11.2000 and quash the same and direct the first and fourth respondents to pay the petitioner, Special Grade Pay for the period from 11.04.1990 to 17.02.1991 and further to

direct the second respondent to put up revised pensionary proposal to the third respondent based on the Special Grade pay to which the petitioner is entitled to and consequently direct the third respondent to sanction pension on the basis of the revised proposal.

2. The brief facts necessary for the purpose of disposal of this writ petition are as follows:
The writ petitioner joined as B.T Assistant in the Vellayan Chettiar Higher Secondary School, Thiruvottiyur on 10.06.1970. While in service, she went on medical leave from 03.09.1984 till 09.03.1989. She rejoined on 10.03.1989 and again went on leave on 10.04.1990. On 11.04.1990 she joined duty, but from 12.04.1990 vacation started and immediately after vacation leave, she applied for earned leave and thereafter from 19.06.1990 till 15.01.1991, she went on leave on medical grounds and again from 17.01.1991 to 17.02.1991, she went on medical leave without producing medical certificate. On 17.02.1991, she retired voluntarily from service. As from the date of entry into service 20 years was completed, she wanted Special Grade Pay and also calculated pension in accordance with the Special Pay, she was entitled to. But, that was rejected on the ground that though she becomes eligible for Special Grade Pay from 04.09.1990, she was on unearned leave on medical grounds on that date and subsequently, she never rejoined service. Therefore, as per the Rule-87 and Rule 11 of the fundamental rules, on the date when a person gets higher salary, if she is not in service, higher salary will not be paid to her. It will be paid only on the date on which she rejoined duty. Since she never rejoined service after 04.09.1990, she has not entitled to get Special Grade Pay. Against that, the present writ petition has been filed.
3. The learned counsel appearing for the petitioner submitted that since all the leaves have been sanctioned, she went on leave as per the Rules. Therefore, the mere fact that she was not on duty on the date on which she became eligible for Special Grade, it does not prevent her from getting Special Pay and pension being calculated on that ground.
4. The learned counsel appearing for the respondents submitted that as per proviso to Rule 30(1), any increase in pay which is not actually drawn shall not form part of the emoluments. Therefore, inasmuch as she never rejoined duty after 04.09.1990, she never actually drawn that pay and therefore, she is not entitled for Special Grade Pay.

5. On the facts of this case, it is seen that the petitioner was eligible for Special Grade Pay on 04.09.1990. But on that day, admittedly, she was on unearned leave on medical grounds. Thereafter, she never rejoined duty, till she retired voluntarily on 17.02.1991. As per Rule 87 and 11 of the Fundamental Rules on the date on which the person eligible for a higher salary, she should be on duty and if she did not join duty on any other day, she is not entitled to get the higher pay and she will be eligible to that higher salary only on the date on which he rejoined duty. In this case, the petitioner never rejoined duty after 04.09.1990 and sought for voluntary retirement and retired voluntarily on 17.02.1991. Therefore, as per Rule 30(1) of Tamil Nadu Pension Rules, she is not eligible for the higher monetary benefits. Therefore, there is no infirmity in the impugned order and it cannot be interfered with.
6. In the result, the writ petition is devoid of merits and is

dismissed. No costs.

Index:Yes
Internet:Yes

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